

HOUSE BILL REPORT

SHB 2895

As Passed House:
February 12, 2016

Title: An act relating to alien victims of certain qualifying criminal activity.

Brief Description: Enhancing crime victim participation in the criminal justice system process.

Sponsors: House Committee on Public Safety (originally sponsored by Representative MacEwen).

Brief History:

Committee Activity:

Public Safety: 2/3/16, 2/5/16 [DPS];

Appropriations: 2/9/16 [DPS(PS)].

Floor Activity:

Passed House: 2/12/16, 92-4.

Brief Summary of Substitute Bill

- Requires law enforcement agencies and other entities to complete victim certifications for U and T nonimmigrant visa applications for qualifying victims of certain crimes.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Kelly Leonard (786-7147).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking

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Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Dent, Fitzgibbon, Haler, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Robinson, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Tharinger and Van Werven.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Minority Report: Without recommendation. Signed by 1 member: Representative Condotta.

Staff: Charlie Gavigan (786-7340).

Background:

The federal government has jurisdiction over the terms and conditions for immigrants to reside in the United States (U.S.). Noncitizen immigrants living permanently in the U.S. have "immigrant status," and noncitizens who enter or stay in the U.S. on a temporary basis have "nonimmigrant status."

U Visas. The U nonimmigrant status visa (U visa) is for victims of certain crimes who are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. A person may qualify for a U visa if he or she:

- is or was the victim of a qualifying criminal activity that occurred in the U.S. or violated U.S. laws;
- suffered substantial physical or mental abuse as a result of the activity; and
- is helpful, was helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the criminal activity.

Qualifying criminal activities include violations of the following federal crimes: Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Female Genital Mutilation, Felonious Assault, Fraud in Foreign Labor Contracting, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trade, Stalking, Torture, Trafficking, Witness Tampering, Unlawful Criminal Restraint, other related crimes, and similar activity where the elements of the crime are substantially similar to the federal crime.

In order to obtain a U visa, a person must submit a particular form, Form I-918, Supplement B, completed by an agency certifying him or her as being helpful to law enforcement. Certifying agencies include any federal, state, or local law enforcement agency, prosecutor, judge, or other authority with the responsibility for the investigation or prosecution, conviction, or sentencing of criminal activity.

U visas are granted for a period not to exceed four years, but they can be extended for additional periods if the victim is re-certified. Persons with U visas may apply for permanent residence (also referred to as a green card) after three years if they meet certain statutory requirements.

T Visas. The T nonimmigrant status visa (T visa) is for those who are or have been victims of human trafficking. A person may qualify for a T visa if he or she:

- is or was a victim of trafficking;
- is in the U.S., American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking;
- complies with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and
- would suffer extreme hardship involving unusual and severe harm if removed from the U.S.

A person applying for a T visa is encouraged, but not required, to submit certification from an agency determining that he or she is a victim of a severe form of trafficking. The discretionary certification is completed on Form 914, Supplement B.

Like U visas, T visas are granted for a period not to exceed four years, and they can be extended for additional periods if the victim is recertified. Persons with T nonimmigrant status may apply for permanent residence after three years if they meet certain statutory requirements.

Summary of Substitute Bill:

Certifying Agency. "Certifying agency" includes any state or local law enforcement agency, prosecutor, administrative judge, hearing office, or other authority that has responsibility for the investigation or prosecution of criminal activity. A certifying agency includes an agency that has investigative jurisdiction in its respective area of expertise including, but not limited to, the Washington State Patrol, the Washington Department of Labor and Industries, and the Washington Department of Social and Health Services.

Victims. "Victim of criminal activity" means any individual who has reported criminal activity to a certifying agency, or otherwise participated in the detection, investigation, or prosecution of criminal activity, and has suffered direct or proximate harm as a result of the commission of any criminal activity. "Victim of criminal activity" may also include an indirect victim in certain circumstances.

"Victim of trafficking" means any individual who is or has been a victim of human trafficking, which includes, but is not limited to, the following acts: sex trafficking in which a commercial sex act was induced by force, fraud, or coercion; sex trafficking in which the victim was under the age of 18 years; recruiting, harboring, transportation of, providing, or obtaining a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery; or another act or circumstance involving human trafficking.

Certification. For U visa applications, upon the request of a victim or his or her representative, a certifying agency must make a determination and certify on U Visa Application Form I-918, Supplement B, whether the victim was a victim of criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that criminal activity. For T visa applications, upon the request of a victim or his or her representative, a certifying agency must make a

determination and certify on T Visa Application Form I-914, Supplement B, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of 18, whether he or she has complied with any reasonable requests from law enforcement in any related investigation or prosecution of the related trafficking offense.

The certifying official must fully complete and sign the certification, including, if applicable, the specific details regarding the nature of the crime investigated or prosecuted, and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of criminal activity. A current investigation, the filing of charges, and a prosecution or conviction are not required for a victim to request and obtain the certification. A certifying agency may only withdraw the certification if the victim unreasonably refuses to provide information and assistance when reasonably requested.

Deadlines. The certifying agency must complete requests for certification within 90 days of its receipt. However, requests for certification must be completed within 14 days if the victim is subject to removal proceedings. If the victim is under or has children under 21 years old, and he or she may lose the ability to procure a visa based on age, the certifying agency must fulfill the request no later than 14 days before the victim or his or her children reach 21 years old, or within 90 days, whichever is earlier. The requests for expedited certification must be affirmatively raised by the victim. A request for reissuing a certification must be completed within 90 days.

Disclosure. A certifying agency is prohibited from disclosing personal identifying information, or information regarding the citizenship or immigration status of any victim who is requesting a certification, unless required to do so by applicable federal law or court order, or unless the certifying agency has written authorization from the victim. This requirement does not affect a prosecutor's or law enforcement's obligations to disclose information and evidence to criminal defendants under other applicable laws and court rules.

Protocols. The head of each certifying agency must designate an agent, who performs a supervisory role within the agency, to respond to requests for certifications and maintain records on certification requests and responses. Those records must be reported to the Office of Crime Victims' Advocacy (OCVA) on an annual basis.

All certifying agencies must develop a language access protocol for limited English proficient and deaf or hard of hearing victims.

Crime Victim Certification Steering Committee. The OCVA must convene a Crime Victim Certification Steering Committee (Committee). The Committee must include members representing interests listed in the bill. The Committee is responsible for the following:

- monitoring compliance with the requirements of the certification process;
- developing and implementing training of law enforcement, prosecutors, victim advocates, state agency personnel, court personnel, and others about the requirements of the certification process;
- dissemination of information about the certification process to affected communities and the general public;

- establishing mechanisms by which the public can report concerns and recommendations regarding implementation of the requirements of the certification process;
- identifying implementation issues and other trends, and providing recommendations to the Governor and the Legislature for addressing these issues; and
- other responsibilities relating to the certification process identified by the Committee.

Criminal Justice Training Commission. The Criminal Justice Training Commission, in collaboration with the OCVA and the Committee, must develop and adopt minimum standards for a course of study on U and T nonimmigrant visas, other legal protections for immigrant survivors of criminal activity, and promising practices in working with immigrant crime victims.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 8, 2016.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Public Safety):

(In support) A person who is in this country, regardless of their immigration status, should not fear speaking with law enforcement when he or she has been a victim of a crime.

Immigrants should not fear deportation or other legal repercussions just for reporting crimes to law enforcement. The bill is about victims' rights. Both this bill and House Bill 2912 address this issue through a current federal program for immigrant victims.

(Opposed) The policy is laudable, but the language contained within House Bill 2912 is preferred over this bill.

Staff Summary of Public Testimony (Appropriations):

(In support) The fiscal note is confusing in that the estimated number of certifications the Washington State Patrol would be dealing with is likely much smaller than estimated. There appears to be a misunderstanding about the scope of the bill since this has been an existing program under the Violence Against Women Act since 2000. There is existing funding for this program. The purpose of the bill is to provide uniform policies across the state in the use of existing funds because there is not uniformity now. There are federal funds that should be available for training and coordination which is to be done by the Office of Crime Victims Advocacy and the Criminal Justice Training Center under the bill. There are probably about 1,000 certifications per year in Washington.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Representative MacEwen, prime sponsor.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Testifying (Appropriations): Grace Huang, Washington State Coalition Against Domestic Violence.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.